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10/537,245

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EXAMINER

CHAUDRY, ATIF H

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/537,245	<b>Applicant(s)</b> STOTKIEWITZ ET AL.	
	<b>Examiner</b> ATIF H. CHAUDRY	<b>Art Unit</b> 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-14, 17 and 19-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-14, 17 and 19-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Status of the claims**

Applicant's amendment as filed on 05/26/2009 has been entered. The amendment added claim 32 and amended claims 10, 11, 13, 14, and 17. Currently claims 10-14, 17, 19-32 are pending in this application.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Blaser (US Patent 4420015).

3. Regarding claim 30, Blaser (Fig. 1-3) discloses a valve for a packaging container 1, having a cup-shaped body 10 having a rotational symmetry, a raised peripheral region (side wall) extending all the way around and the top side of which can be joined to a length of packaging material that forms an inside of the packaging container 1, and a middle region having a through opening 14 for gas embodied therein, and a valve diaphragm 20, which closes the opening 14 in the holder body 10 up to a defined overpressure in the packaging container 1 and opening the opening 14 in the event of an overpressure to form a conduit for the outflow of gas which escapes from the packaging container 1 via at least one opening 2 embodied in the length of packaging material of the packaging container 1 inside the peripheral region, wherein the holder

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body 10 is embodied as a rotationally symmetrical shallow body and wherein the valve diaphragm 20 is joined in captive fashion to the holder body and in the middle region having an indentation embodied in the region of the opening 14.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 10-14, 17, 19- 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaser (US Patent 4420015) in view of Cope (US Patent 3179309) further in view of Domke (US Patent 5727881).

4. Regarding claims 10 and 17, Blaser (Fig. 1-3) discloses a valve for a packaging container 1, having a cup-shaped body 10 having a rotational symmetry, a raised peripheral region (side wall) extending all the way around and the top side of which can

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be joined to a length of packaging material that forms an inside of the packaging container 1, and a middle region having a through opening 14 for gas embodied therein, and a valve diaphragm 20, which closes the opening 14 in the holder body 10 up to a defined overpressure in the packaging container 1 and opening the opening 14 in the event of an overpressure to form a conduit for the outflow of gas which escapes from the packaging container 1 via at least one opening 2 embodied in the length of packaging material of the packaging container 1 inside the peripheral region, wherein the holder body 10 is embodied as a rotationally symmetrical shallow body and wherein the valve diaphragm 20 is joined in captive fashion to the holder body and in the middle region having an indentation embodied in the region of the opening 14.

Blaser (Fig. 2) discloses the valve diaphragm 20 in the regions joined to the holder body extending to the (peripheral region) side wall of the body but fails to disclose the valve diaphragm edges not joining the body spaced apart from the peripheral regions of the body in a striplike fashion, with two straight edges disposed opposite one another. Cope (Fig. 1-5) teaches a pressure based diaphragm check valve 23 having a striplike diaphragm 23 having two straight edges for air passage such that the distance between the straight edges forming air passage is shorter (seen more clearly in Fig. 1, 4) than the distance between the edges 23a bonded to the surface 21 which extend close to the peripheral wall 19. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the valve disclosed by Blaser with straight

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edges for portion of diaphragm forming air passages as taught by Cope in order to facilitate air flow from the air-passage forming edges.

Blaser fails to disclose the indentation (which has the opening 14) having a flat bottom and multiple openings. Domke (Fig. 3) teaches a diaphragm valve comprising a valve diaphragm 19 covering an indentation 28, 29 having a flat bottom with holes 3 inside the indentation. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the valve disclosed by Blaser with flat bottom at the indentation as taught by Domke in order to simplify construction of the valve. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the valve disclosed by Blaser with a plurality of openings as taught by Domke in order to ensure the valve remains in working condition in case of blockage of one of the openings.

5. Regarding claim 13, Blaser discloses the diaphragm 20 joined to the body 11, with the help of jaws on two opposed sides at jaws 31 and 32, with opening 14 in the middle, and a spacing formed in the middle between the opening 2 and top of diaphragm 20.

6. Regarding claims 19, 21, and 22, Blaser discloses (col 4 line 52) a raised area 16, on the top side of the holder body 10, joined to the package 1 by means of wave energy (ultrasonic welding).

7. Regarding claims 28 and 29, Blaser discloses an indentation around opening 14 but fails to disclose a numerical value of depth of indentation. It would have been

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obvious to a person of ordinary skill in the art at the time of invention to have used the claimed optimal depth, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d-272, 205 USPQ 215 (CCPA 1980).

8. Regarding claim 11 and 12, Blaser fails to disclose a specific shape of indentation. Domke (Fig. 1, 2) teaches a pressure relief valve 10, with a diaphragm 19 and air openings 3; the valve has indentation 28, 29 in the form of intersecting circles between the diaphragm 19 and air hole 3. It would have been obvious to a person of ordinary skill in the art at the time of invention to have used the semicircular indentation as taught by Domke in the valve disclosed by Blaser as an alternative shape of indentation. Matters (See MPEP 2144.04) relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

9. Regarding claim 14, Blaser discloses the diaphragm 20 joined to the body 11, with the help of jaws on two opposed sides at jaws 31 and 32, with opening 14 in the middle, and a spacing formed in the middle between the opening 2 and top of diaphragm 20.

10. Regarding claim 20, Blaser discloses (col 4, line 52) a raised area 16, on the top side of the holder body 10, joined to the package 1 by means of wave energy (ultrasonic welding).

11. Regarding claims 23-27, Blaser fails to disclose adhesive layer as method of joining valve to the body. Domke (Fig. 3) teaches an adhesive layer 16 joining the valve

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body 37 to a container 2. It would have been obvious to a person having ordinary skills in the art at the time of the invention to have provided the valve disclosed by Blaser with the adhesive layer as taught by Domke in order to join the valve to the body.

12. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blaser (US Patent 4420015) in view of Cope (US Patent 3179309) further in view of Domke (US Patent 5727881).

13. Blaser (Fig. 1-3) discloses a valve for a packaging container 1, having a cup-shaped body 10 having a rotational symmetry, a raised peripheral region (side wall) extending all the way around and the top side of which can be joined to a length of packaging material that forms an inside of the packaging container 1, and a middle region having a through opening 14 for gas embodied therein, and a valve diaphragm 20, which closes the opening 14 in the holder body 10 up to a defined overpressure in the packaging container 1 and opening the opening 14 in the event of an overpressure to form a conduit for the outflow of gas which escapes from the packaging container 1 via at least one opening 2 embodied in the length of packaging material of the packaging container 1 inside the peripheral region, wherein the holder body 10 is embodied as a rotationally symmetrical shallow body and wherein the valve diaphragm 20 is joined in captive fashion to the holder body and in the middle region having an indentation embodied in the region of the opening 14.

Blaser discloses a clamping member 30 to hold the diaphragm to the body 10 but fails to disclose the valve consisting of valve body and diaphragm only. Cope (Fig. 1-5) teaches a pressure based diaphragm check valve having a valve

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diaphragm 23 attached to the body of the valve by adhesive surface 23a of the diaphragm. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the valve disclosed by Blaser with adhesive surfaces on valve diaphragm in lieu of a clamping member as taught by Cope as an alternative holding method.

Blaser (Fig. 2) discloses the valve diaphragm 20 in the regions joined to the holder body extending to the (peripheral region) side wall of the body but fails to disclose the valve diaphragm edges not joining the body spaced apart from the peripheral regions of the body in a striplike fashion, with two straight edges disposed opposite one another. Cope (Fig. 1-5) teaches a pressure based diaphragm check valve 23 having a striplike diaphragm 23 having two straight edges for air passage such that the distance between the straight edges forming air passage is shorter (seen more clearly in Fig. 1, 4) than the distance between the edges 23a bonded to the surface 21 which extend close to the peripheral wall 19. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the valve disclosed by Blaser with straight edges for portion of diaphragm forming air passages as taught by Cope in order to facilitate air flow from the air-passage forming edges.

Blaser (Fig. 2) discloses a single opening 14 in the indentation but fails to disclose two or more openings or a flat bottom surface of indentation. Domke (Fig. 3) teaches a diaphragm valve comprising a valve diaphragm 19 covering an indentation 28, 29 having a flat bottom with two openings 3 inside the

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indentation. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the valve disclosed by Blaser with a plurality of openings as taught by Domke in order to ensure the valve remains in working condition in case of blockage of one of the openings.

14. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blaser (US Patent 4420015) in view of Cope (US Patent 3179309) and Domke (US Patent 5727881) further in view of Gunter et al. (US Patent 7294354).

15. Blaser (Fig. 2) discloses a single opening 14 in the indentation but fails to disclose two or more openings. Gunter et al. (Fig. 3) teaches a diaphragm check valve having a strip-like diaphragm 44 having two “air passage forming edges” (edges not attached to the base 42 by adhesive 46) and having a plurality of openings 52 at least two of them located on an axis perpendicular to the “air passage forming edges”. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the valve disclosed by Blaser with a plurality of openings located on an axis perpendicular to the edges as taught by Gunter et al. in order to ensure the valve remains in working condition in case of blockage of one of the openings.

### ***Response to Arguments***

16. Applicant's arguments filed 05/26/2009 have been fully considered but they are not persuasive.

17. In response to applicant's argument that Cope and Domke are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's

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endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the rectangular tape disclosed by Cope acts as a valve diaphragm and does the same function (of a pressure based check valve) as the claimed invention; similarly Domke also discloses a valve diaphragm as a pressure based check valve and mere change in location does not make it non-analogous. Claims 13 and 14 do not spell out a specific method of joining the diaphragm to the body. Blaser discloses the valve diaphragm joined to body at two semicircular edges and Cope has been used to show “incorporation” of straight edges.

18. Applicant's argument regarding claim 30 that Blaser in view of Cope comprises 3 elements (valve body, diaphragm and clamping member) is not persuasive since the term “consisting of” limits what is defined by the claim (not the reference). [See MPEP 2111.02]

19. Regarding the added citation “flat bottom” in amended claim 10, Domke has been cited to “show incorporation” of flat bottom.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ATIF H. CHAUDRY whose telephone number is (571)270-3768. The examiner can normally be reached on Mon-Fri Alternate Friday off 9-5 EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on (571)272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Atif H Chaudry/  
Examiner, Art Unit 3753

/John Rivell/  
Primary Examiner, Art Unit 3753

7/8/2009